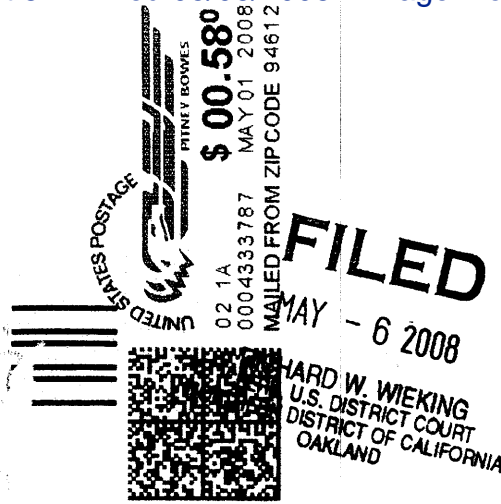


Malinka Moye  
40. 42. Parsons Street  
San Francisco, CA 94118

CV08-02126 SBA

OFFICE OF THE CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
1301 CLAY ST., SUITE 400S  
OAKLAND, CA 94612-5212  
OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300



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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

~~ORIGINAL~~  
FILED

APR 30 2007

MALINKA MOYE,

No. C 08-02126 SBA

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Plaintiff,

**ORDER**

v.

[Docket Nos. 3-4]

CITY AND COUNTY OF SAN  
FRANCISCO AUTO RETURN,

Defendant.

**REQUEST BEFORE THE COURT**

Before the Court is *pro per* plaintiff's Application to Proceed *in Forma Pauperis* (the "Application") [Docket No. 3] and his MOTION to Relate Cases [Docket No. 4]. For the reasons discussed below, the Court DENIES without prejudice the Application and the Motion.

**BACKGROUND**

On April 24, 2008, plaintiff *pro per* sued defendant City and County of San Francisco Auto Return. See Docket No. 1. Plaintiff's complaint simply states, "[i]ntentional violation of plaintiff [sic] civil rights. Prevention of Equal Access to Justice Act. Car stolen. RICO Act." See *id.* at 2. In his Complaint, plaintiff provided no other allegations to support these claims. The same day he filed his Complaint, he filed his Application.

In addition, on this same day, he filed his Motion. The Motion states at an unspecified date, plaintiff:

will & hereby does move court for judgement. Attorney General to file criminal charges. Against each. Employee. Under employment of City and county of San Francisco. Who aided in false imprisonment of Plaintiff. Unsuccessful murder attempt upon Plaintiff. Employees of Auto-Return who illegally impounded plaintiff's [sic] vehicle and may have sold. ILLEGALLY. People who aided in ILLEGALL [sic] sale of plaintiff's [sic] families residence. TWICE.

Motion at 1:21-27.

1 It continues:

2 This motion is brought on the following grounds. Employees under City and  
 3 County of San Francisco obstructed justice. Office of the District Attorney falsely  
 4 imprisoned plaintiff numerous times. Allowed plaintiff's attempted murder attackers  
 5 to flee jurisdiction without charge. Allowed attempted murder attackers [sic] to sale  
 6 [sic] plaintiff's family [sic] home illegally [sic]. With full knowledge prior to sale.  
 7 Office of the District Attorney. Allowed plaintiff [sic] son to be physically abused  
 8 with prosecution. Office of the District Attorney allowed an illegal transfer of  
 9 plaintiff's [sic] other family residence, without prosecution. Office of the District  
 10 attorney. Set plaintiff up for false drug possession charge MALICIOUS  
 11 PROSECUTION. Auto-return false impounded plaintiffs vehicle & may have  
 12 possible made an intentional ILLEGAL VEHICLE TRANSACTION. Violating civil  
 13 rights act. RICO ACT. EQUAL ACCESS TO JUSTICE ACT.

14 Motion at 2:5-13.

## 15 LEGAL STANDARD

### 16 I. Demonstrating *In Forma Pauperis* Status

17 The benefit of proceeding *in forma pauperis* is a privilege, not a right. *Franklin v. Murphy*,  
 18 745 F.2d 1221, 1231 (9th Cir. 1984). As 28 U.S.C. § 1915(a)(1) states, in part:

19 Any court of the United States may authorize the commencement, prosecution or  
 20 defense of any suit, action or proceeding, civil or criminal, or appeal therein, without  
 21 prepayment of fees or security therefor, by a person who submits an affidavit that  
 22 includes a statement of all assets such person possesses that the person is unable to  
 23 pay such fees or give security therefor.

24 28 U.S.C. § 1915(a)(1).

25 A petitioner need not "be absolutely destitute to enjoy the benefit of this statute." *Adkins v.*  
 26 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948); *Jefferson v. U.S.*, 277 F.2d 723, 725 (9th  
 27 Cir. 1960), *cert. denied*, 364 U.S. 896 (1960). An affidavit is sufficient if it states a person cannot  
 28 pay or provide security for court costs and still provide himself or herself and any dependents with

1 the necessities of life. *Adkins*, 335 U.S. at 339.

## 2 **II. Claims Review under 28 U.S.C. § 1915**

3 Title 28 U.S.C. § 1915 also authorizes a district court to dismiss a claim filed *in forma*  
 4 *pauperis* “at any time” if it determines: (1) the allegation of poverty is untrue; (2) the action is  
 5 frivolous or malicious; (3) the action fails to state a claim; or (4) the action seeks monetary relief  
 6 from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). *Pro se* pleadings  
 7 must be liberally construed. *Balisteri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).  
 8 When reviewing a complaint, however, a court does not accept as true unreasonable inferences or  
 9 conclusory legal allegations cast in the form of factual allegations. *See W. Mining Council v. Watt*,  
 10 643 F.2d 618, 624 (9th Cir. 1981); *Miranda v. Clark County, Nev.*, 279 F.3d 1102, 1106 (9th Cir.  
 11 2002) (“conclusory allegations of law and unwarranted inferences will not defeat a motion to dismiss  
 12 for failure to state a claim”); *Sprewell v. Golden State Warriors*, 266 F.3d 1187 (9th Cir. 2001);  
 13 *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988) (“conclusory allegations without  
 14 more are insufficient to defeat a motion to dismiss for failure to state a claim”). Leave to amend is  
 15 properly denied “where the amendment would be futile.” *DeSoto v. Yellow Freight Sys.*, 957 F.2d  
 16 655, 659 (9th Cir. 1992). But if a plaintiff’s complaint is found deficient and an amendment could  
 17 possibly cure the deficiency, the complaint must be dismissed with leave to amend. *See Eldridge v.*  
 18 *Block*, 832 F.2d 1132, 1135-37 (9th Cir. 1987).

## 19 **ANALYSIS**

20 The Court has reviewed plaintiff’s Complaint, in conjunction with his Motion, and find they  
 21 do not state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). While Federal  
 22 Rule of Civil Procedure 8 only requires, “a short and plain statement of the claim showing that the  
 23 pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2); *Leatherman v. Tarrant County Narcotics*  
 24 *Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993); *Lee v. City of Los Angeles*, 250 F.3d  
 25 668, 679 (9th Cir. 2001), a party must “give the defendant fair notice of what the plaintiff’s claim is  
 26 and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47 (1957), *abrogated on other*  
 27 *grounds by Bell Atl. Corp. v. Twombly*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1955 (2007); *Yamaguchi v. U.S.*  
 28 *Dep’t of the Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997) (a complaint must sufficiently establish

1 a basis for judgment). Here, plaintiff has failed to provide any notice to defendant as to what are the  
2 bases for his claims.

3 Further, to the extent plaintiff's RICO claims turn on allegations of fraud, plaintiff must meet  
4 the higher pleading standards of "particularity," imposed by Federal Rule of Civil Procedure 9(b).  
5 Fed. R. Civ. P. 9(b); *Desaigoudar v. Meyercord*, 223 F.3d 1020, 1022-23 (9th Cir. 2000); *see*  
6 *Odom v. Microsoft Corp.*, 486 F.3d 541, 553-54 (9th Cir. 2007). Because, however, plaintiff may be  
7 able to cure his pleading defects by amendment, the Court will grant him 30 days leave to amend.

8 Even if plaintiff had stated a claim upon which relief could be granted, however, the Court  
9 could not grant his Application. The Court notes it is difficult to read and illogical. *See* Docket  
10 No. 3. Plaintiff alleged he has a monthly income of \$750,000 per month, no expenses, yet receives  
11 Supplemental Security Income ("SSI") from the Social Security Administration. *See id.* The Court  
12 could not approve such an Application. Because, however, plaintiff may be able to cure these defect  
13 by amendment, the Court will grant plaintiff 30 days leave to amend.

14 **If, however, plaintiff fails to file an Amended Complaint and a new Application, within**  
15 **30 days of the date of this Order, the Court will dismiss this matter without prejudice, for**  
16 **failure to prosecute.**

17 With regards to plaintiffs' Motion, plaintiff did not request the Court to relate any cases. The  
18 Court thus denies it without prejudice.

### 19 CONCLUSION

20 For the foregoing reasons, the Court DENIES without prejudice plaintiff's Application to  
21 Proceed *in Forma Pauperis* [Docket No. 3]. Likewise, the Court DISMISSES plaintiff's Complaint  
22 [Docket No. 1]. Plaintiff has 30 days from the date of this Order to filed an Amended Complaint and  
23 file a new Application. **If, however, plaintiff fails to file an Amended Complaint and a new**  
24 **Application, within 30 days of the date of this Order, the Court will dismiss this matter**

25 ///

26 ///

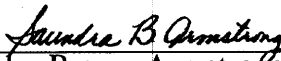
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1 **without prejudice, for failure to prosecute.** Lastly, the Court DENIES without prejudice  
2 plaintiff's Motion to Relate Cases. [Docket No. 4].

3  
4 IT IS SO ORDERED.

5 April 30, 2008

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8 Sandra Brown Armstrong  
9 United States District Judge  
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2 UNITED STATES DISTRICT COURT  
3 FOR THE  
4 NORTHERN DISTRICT OF CALIFORNIA  
5  
6

7 MALINKA MOYE,  
8 Plaintiff,

Case Number: CV08-02126 SBA

**CERTIFICATE OF SERVICE**

9 v.

10 CITY AND COUNTY OF SAN FRANCISCO et  
11 al,

12 Defendant.  
\_\_\_\_\_ /

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
14 Northern District of California.

15 That on April 30, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)  
16 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in  
17 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's  
18 office.

19 Malinka Moye  
20 40. 42. Parsons Street  
San Francisco, CA 94118

21 Dated: April 30, 2008

22 Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk  
23  
24  
25  
26  
27  
28